

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT: PAUL YANOWITZ
UNITED STATES DEPARTMENT OF JUSTICE
NORTHERN DISTRICT OF TEXAS
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Dallas, Texas 75242
214/659-8600

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transcript produced by computer.

Sentencing - March 18, 2005

PROCEEDINGS

3 THE COURT: United States versus Thomas Albert
4 Jones for sentencing.

5 MR. GOLDMAN: Good morning, Your Honor.

6 THE COURT: Mr. Goldman.

This is United States versus Thomas Albert Jones for sentencing.

9 The court has received in this matter the presentence
10 report, the government's statement regarding the presentence
11 report, the government's motion for an additional one level
12 decrease for acceptance of responsibility, the defendant's
13 corrections and objections to the presentence report, the
14 probation officer's addendum, and the government's response
15 to the addendum.

16 Mr. Goldman, are there any other written materials that
17 the court should have received but has not received?

18 | MR. GOLDMAN: There are not, Your Honor.

19 THE COURT: Have you had sufficient time to read
20 and discuss the presentence report with your client?

21 | MR. GOLDMAN: Yes, sir.

THE COURT: Mr. Jones, have you had sufficient time to read and discuss the presentence report with your lawyer?

24 | THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Mr. Goldman and Mr. Yanowitch, it

1 appears that the objection concerning the two level increase
2 on which the government relies is not something that affects
3 sentencing, due to the statutory minimum, so it is not the
4 court's intention to rule on that objection.

5 Mr. Goldman, are there any other objections that have
6 not been resolved and as to which you would like rulings at
7 this time?

8 MR. GOLDMAN: There are not, Your Honor.

9 THE COURT: At this time then I'm ready to hear
10 from you and your client before I pass sentence.

11 MR. GOLDMAN: Your Honor, I would like to have Mr.
12 Jones address the court first, please.

13 THE COURT: Mr. Jones, you have the right to
14 address me personally before I pass sentence upon you.

15 Would you like to say anything on your behalf at this
16 time?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Mr. Jones, you're not required to say
19 anything, but because the right of a defendant to speak to
20 the judge before he is sentenced is considered such a vital
21 right, I am required to make certain on the record that you
22 understand that right and that you are intentionally choosing
23 not to say anything.

24 Do you understand your right to address the court at
25 this time?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Understanding that right, do you wish
3 to say anything before I sentence you?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: All right. Mr. Goldman, are you
6 satisfied your client understands his right of allocution?

7 MR. GOLDMAN: I am, Your Honor.

8 THE COURT: At this time then I'll hear from you,
9 counsel.

10 MR. GOLDMAN: Thank you, Your Honor.

11 Your Honor, as the court notes with respect to this
12 case, there is a statutory minimum of 60 months in this case
13 and it trumps the guidelines, which I believe were 33 to 41
14 months in this case.

15 In looking at Mr. Jones' criminal history, which is
16 found on page 11 and page 12, specifically paragraphs 44 and
17 45, there was an offense that occurred when he was 18 years
18 old and there was another offense that occurred when he was
19 26 years old. Save for those two minor offenses, Your Honor,
20 Mr. Jones has led a crime-free life, and now he faces a
21 significant amount of time before the court for conduct which
22 I know he has expressed contrition to me for committing. And
23 I would hope this court would impose the minimum in this
24 case. I note that the statutory minimum calls for 60 months,
25 although there is no end in terms what the court could

1 impose.

2 I would ask this court to impose the statutory minimum
3 and recommend two things.

4 One, that Mr. Jones be designated to the federal
5 correctional institution at Butner.

6 Two, that he be allowed to participate in the 500 hour
7 comprehensive drug treatment program.

8 Paragraph 45 indicates that he has a driving while
9 intoxicated conviction and it also appears to me that in the
10 presentence report there is an indication in paragraph 59,
11 60, 61, that he was abusing substances, and abusing
12 substances when he committed this offense, so I think that
13 may have played a part in his conduct in this case.

14 And I would ask the court to make those two
15 recommendations.

16 Thank you, Your Honor.

17 THE COURT: Thank you, counsel.

18 Does the government wish to be heard on this matter?

19 MR. YANOWITCH: Your Honor, we have no objection to
20 those recommendations.

21 THE COURT: And does the government wish to be
22 heard or to present any victim, in view of the nature of the
23 offense?

24 MR. YANOWITCH: No, Your Honor.

25 THE COURT: Counsel, do you know of any reason why

1 a sentence cannot lawfully be imposed at this time?

2 MR. GOLDMAN: I do not, Your Honor.

3 THE COURT: Mr. Jones, are you ready for me to pass
4 sentence upon you?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: The court accepts the plea agreement in
7 this case. And in this case it will impose a sentence of 60
8 months.

9 In determining the sentence in this case, I have
10 considered all the factors set out in Title 18, United States
11 Code, Section 3553(a)(1) through (7), inclusive.

12 I am imposing a sentence that is sufficient, but not
13 greater than necessary, to comply with the purposes set forth
14 in section 3553(a)(2).

15 I am imposing this particular sentence to reflect the
16 seriousness of the offense, to promote respect for the law,
17 to provide just punishment for the offense, to afford
18 adequate deterrents to criminal conduct, to protect the
19 public from further crimes of the defendant, and to provide
20 the defendant with needed medical care in the most effective
21 manner.

22 I have considered the guideline range and decided to
23 sentence the defendant within the guideline range.

24 In this case the guideline range is 60 months because of
25 the statutory minimum.

1 Accordi ngl y, on count 4 of the i ndictment it is adj udged
2 that the defendant is hereby committed to the custody of the
3 Bureau of Prisons for a term of 60 months.

4 It is ordered that the defendant pay a mandatory special
5 assessment of \$100.

6 Resti tuti on i s not appl i cabl e.

7 The court is not i mposing a fi ne, due to the defendant's
8 i nabi l i ty to pay a fi ne.

9 It is ordered that the defendant serve a period of
10 supervised release of 5 years.

11 Whi le on supervised release, the defendant shall not
12 commit another federal, state, or local crime, and shall not
13 i llegal l y possess a controlled substance.

14 The defendant shall refrain from any unl awful use of a
15 control l ed substance.

16 The defendant shall submit to one drug test wi thin 15
17 days of release from i mpri sonment, and at least two peri odic
18 drug tests thereafter, as directed by the Uni ted States
19 Probati on Offi cer.

20 Whi le on supervised release, the defendant shall also
21 comply wi th the standard terms and condi ti ons recommended by
22 the Uni ted States Sentenci ng Commi ssion and adopted by this
23 court on i ts judgment form.

24 The defendant shall also comply wi th the fol owing terms
25 and condi ti ons.

1 Number 1, the defendant shall not possess a firearm, as
2 defined in Title 18, United States Code, Section 921.

3 Number 2, the defendant shall report in person to the
4 probation office in the district to which the defendant is
5 released, within 72 hours of release from the custody of the
6 Bureau of Prisons.

7 Number 3, the defendant shall participate in a program
8 approved by the United States Probation Office for treatment
9 of narcotic, drug, or alcohol dependency, which will include
10 testing for the detection of substance use or abuse.

11 The defendant shall abstain from the use of alcohol
12 and/or all other intoxicants during and after completion of
13 treatment.

14 The defendant shall contribute to the cost of services
15 rendered at a rate of at least \$25 per month.

16 Number 4, the defendant shall participate in sex
17 offender treatment services, as directed by the United States
18 Probation Officer, until successfully discharged.

19 These services may include psychophysical testing
20 to monitor the defendant's compliance, treatment progress,
21 and risk to the community.

22 The defendant shall contribute to the cost of services
23 rendered at a rate of at least \$25 per month.

24 Number 5, the defendant shall not access or loiter near
25 school grounds, parks, arcades, playgrounds, amusement parks

1 or other places where children under the age of 18 may
2 frequently congregate, unless approved in advance by the
3 United States Probation Officer.

4 Number 6, the defendant shall neither possess nor have
5 under his control any pornographic, sexually oriented or
6 sexually stimulating materials, including visual, auditory,
7 telephonic, or electronic media, computer programs or
8 services.

9 The defendant shall not frequent any place where such
10 material or entertainment is available.

11 The defendant shall not use any sex-related telephone
12 numbers.

13 Number 7, the defendant shall neither possess, have
14 under his control, or use any computer or any other
15 electronic device used for the transmission, receipt, or
16 distribution of pornographic, sexually oriented, or sexually
17 stimulated materials, including visual, auditory, telephonic,
18 or had electronic media, computer programs or services.

19 The defendant shall not patronize any place where such
20 material or such computer or electronic devices are
21 available.

22 Number 8, the defendant shall register with state and
23 local law enforcement as directed by the United States
24 Probation Officer in any state where the defendant resides,
25 is employed, carries on a vocation, or is a student.

1 The defendant shall provide all information required in
2 accordance with state registration guidelines.

3 Initial registration shall be completed within 7
4 calendar days of release from confinement.

5 The defendant shall provide written verification of
6 registration to the United States Probation Officer within
7 three business days following registration.

8 This registration shall be renewed annually and each
9 time a change of residence occurs.

10 Number 9, the defendant shall neither seek nor maintain
11 employment or volunteer work at any location and/or activity
12 where children under the age of 18 would congregate, without
13 prior permission of the United States Probation Officer.

14 Number 10, the defendant shall not date or befriend
15 anyone who has children under the age of 18, unless approved
16 in advance by the United States Probation Officer.

17 Number 11, the defendant shall obtain approval of the
18 United States Probation Officer prior to a change in
19 residence or living situation.

20 Number 12, the defendant shall submit a blood sample, as
21 directed by the United States Probation Officer, to be
22 included in the state sex offender DNA databank.

23 The defendant shall pay for the cost of such services.

24 Does the government have a motion to dismiss?

25 MR. YANOWITCH: Yes, Your Honor. At this time

1 pursuant to the plea agreement we would move to dismiss
2 counts 1, 2, 3, 5, and 6 of the indictment.

3 THE COURT: On the motion of the government it is
4 ordered that counts 1, 2, 3, 5, and 6 of the indictment are
5 dismissed as to this defendant only.

6 The court recommends to the Bureau of Prisons that the
7 defendant be assigned to FCI Butner, B-U-T-N-E-R, North
8 Carolina, if eligible.

9 The court also recommends to the Bureau of Prisons that
10 the defendant be allowed to participate in the institutional
11 residential drug abuse program, if eligible, and be assigned
12 to serve his sentence at a facility where he can participate
13 in the program.

14 Mr. Goldman, do you have anything further at this time?

15 MR. GOLDMAN: I do not, Your Honor.

16 THE COURT: At this time I remand the defendant to
17 the custody of the United States Marshal for transporting
18 directly to the designated institution.

19 Counsel, if you have nothing further, you're excused.

20 MR. GOLDMAN: Thank you, Your Honor.

21 MR. YANOWITCH: Thank you, Your Honor.

22

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C E R T I F I C A T I O N

I, PAMELA J. WILSON, CSR, certify that the foregoing is a transcript from the record of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

9 This is the 9th day of July, 2010.

s/Pamel a J. Wi l son
PAMELA J. WI LSON, RMR, CRR
Offi ci al Court Reporter
The Northern Di strict of Texas
Dallas Di vi si on